

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 03 CR 1322

v. : U.S. Courthouse

MOHAMMED AL-MOAYAD, : Brooklyn, New York

July 28, 2005

Defendant. : 9:35 a.m.

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TRANSCRIPT OF SENTENCE
BEFORE THE HONORABLE STERLING J. BROOKLYN, JR.
UNITED STATES DISTRICT JUDGE

FILED
IN CLERKS OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ OCT 06 2005 ★

APPEARANCES:

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For the Defendant WILLIAM GOODMAN, ESQ.
Al-Moayad: ROBERT BOYLE, ESQ.

For the Defendant JONATHAN MARKS, ESQ.
Zayed:

Also Present:
Lamis Deek

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I hereby certify that the foregoing is a
true and accurate transcript from my sten-
ographic notes in this proceeding.

Burton H. Sulzer
Official Court Reporter
U.S. District Court

Proceedings recorded by mechanical stenography, transcript
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(Open court-appearances noted.)

2 (Two Interpreters sworn.)

3 THE COURT: Do we have some housekeeping matters?

4 MS. MOORE: Yes, your Honor.

5 THE COURT: The first is there are Rule 29 motions
6 by both defendants. Did you want to add anything to your
7 submissions?

8 MR. GOODMAN: Not at this time.

9 THE COURT: All right. I am going to deny those
10 motions. I'm not going to substitute my judgment for the
11 judgment of the jury.

12 With respect to, there is a rule 34 motion in
13 essence challenging the jurisdiction of this court to try the
14 defendants. I'm going to deny that motion.

15 What else do we have?

16 MS. MOORE: I believe that was it, your Honor.

17 THE COURT: There are several objections to the
18 presentence report by both defendants. As a matter of fact,
19 notwithstanding these objections, they will not affect the
20 guidelines, will they?

21 MR. GOODMAN: Will my objections affect the
22 guidelines?

23 THE COURT: The paragraph that you mentioned in your
24 objections -- let me see, just a second -- what the paragraphs
25 are.

1 MR. GOODMAN: Your Honor, I'm familiar with the
2 submission. To the extent the court chooses to follow the
3 guidelines and impose a guideline sentence, these particular
4 factors will not affect that sentence, hypothetically.

5 THE COURT: Okay. Do you want to say something?

6 MS. MOORE: Your Honor, we agree that technically
7 the court does not need to rule on them; however, we would ask
8 the court to go ahead and uphold those paragraphs because, as
9 we demonstrate in our letter, we believe that they are fully
10 supported by the trial record before the court and the PSR is
11 accurate.

12 MR. MARKS: I think counsel might have misspoken
13 when she said they're fully supported by the trial record
14 because much of the evidence, and I put that in quotes, that
15 she cites is found in 3500 material which was not received in
16 evidence.

17 MR. GOODMAN: I would, your Honor, add similar
18 thoughts if the court chooses to rule upon these. I thought
19 that the court said that it was -- I don't know what the
20 court's intention is.

21 THE COURT: I recall one of your objections was that
22 the defendant Moayad -- I think I recall testimony through Mr.
23 Al Ansi, where he said that he had personally given Osama bin
24 Laden \$20 million prior to September the 11th, or words to
25 that effect.

1 MR. GOODMAN: He had told the FBI that, your Honor.
2 I believe that in his -- in the direct examination of Mr. Al
3 Ansi, he said he could not state what the precise amount was,
4 but he had at one time said that to the FBI.

5 MS. MOORE: Actually in the cross-examination by
6 Mr. Marks, Mr. Al Ansi said that in Yemen, Mr. Moayad told him
7 that he had given bin Laden \$20 million prior to September
8 11th and within the past few years. However, in Frankfurt, he
9 stated that his dealings with bin Laden had been in the
10 eighties. That was the testimony of Al Ansi elicited from
11 Mr. Marks.

12 THE COURT: I recall the \$20 million prior to
13 September 11th. It's not going to impact the guideline range,
14 so I'm going to leave the paragraphs in there. You have your
15 exception to them.

16 MR. MARKS: I just don't want my silence to be taken
17 as acceptance of Ms Moore's statement. My recollection of the
18 testimony of Al Ansi is that he could not recall, that he had
19 no way of knowing in which decade the sheik was claiming that
20 he gave money to Al-Qaeda or, rather, to bin Laden.

21 THE COURT: This is a distinction without a
22 difference.

23 Have Mr. Moayad come up. Have you read or had the
24 presentence report interpreted for you?

25 THE DEFENDANT: I don't remember it. The one that

1 Lisa wrote?

2 THE COURT: Right.

3 THE DEFENDANT: That was against me and it didn't
4 take any words that I said.

5 THE COURT: The question is, have you read it and
6 discussed it with your lawyer?

7 THE DEFENDANT: Discussion, no.

8 THE COURT: You didn't discuss it with your lawyer?

9 THE DEFENDANT: No, I didn't. I read it, yes, but I
10 didn't discuss it.

11 THE COURT: Mr. Goodman.

12 MR. GOODMAN: May I confer with my client for a
13 moment?

14 THE COURT: Yes.

15 (Pause.)

16 THE DEFENDANT: Your Honor, when I looked at it, as
17 much as I know, I didn't go through it point-by-point and by
18 this way we can discuss it and we can talk about it and object
19 to things. That's all.

20 And I don't know what is the significance of this
21 report. This is the first time I come here to the court.

22 THE COURT: I am going to render a decision in
23 imposing a sentence on you based upon the report, or based
24 upon the report and what I can recall of the trial.

25 THE DEFENDANT: And what do you mean, your Honor?

1 THE COURT: I have read the report that Miss Langone
2 wrote about you, and based upon this report, and me having
3 presided over your trial, I must now give you a sentence.

4 THE DEFENDANT: Right. But are you going to hear
5 from me?

6 THE COURT: I'm giving you an opportunity right now
7 to say something about the report, but you have to have at
8 least read the report or have the report interpreted for you
9 and have discussed this report with Mr. Goodman.

10 MR. GOODMAN: Let me just say for the record, and
11 for my client as well. We gave the defendant, we gave Sheik
12 Al-Moayad a copy of the report translated into Arabic. We
13 have had general discussions about the report.

14 He's familiar with the contents of the report. He
15 understands that the court is going to sentence him today
16 based upon that report and based upon our submissions to the
17 court as well as the government's submissions.

18 THE DEFENDANT: They said to me they will send a
19 response to the judge with regard to this report and I don't
20 know if they send it and what --

21 THE COURT: I do have the submissions from Mr.
22 Goodman, from your lawyer, and the government. I do have
23 those reports.

24 THE DEFENDANT: So what should I do now, should I
25 talk? This is the first time I come to the court. I don't

1 THE COURT: I do it just the opposite. I was going
2 to give him an opportunity to say something in mitigation and
3 then you an opportunity to say something and then the
4 government would have an opportunity to say something.

5 I am inquiring whether Mr. Al-Moayad, Sheik Moayad,
6 is prepared to go forward right now.

7 MR. GOODMAN: He has his thoughts prepared. I don't
8 know if he's ready to give them right now. Could we have just
9 a few minutes so he can collect his thoughts? He did not know
10 he would be speaking first.

11 THE COURT: All right.

12 MR. GOODMAN: Thank you.

13 THE COURT: Where would you want him to sit?

14 THE MARSHAL: Here, Judge, is fine.

15 (Pause.)

16 THE COURT: Call the other case.

17 THE CLERK: U.S. versus Mohammed Zayed.

18 THE COURT: Mr. Zayed, have you read and discussed
19 the presentence report with your lawyer or had it translated
20 for you?

21 THE DEFENDANT: No, it was not translated to me,
22 only some points. He explained to me some points,
23 Mr. Attorney explain to me some points from the item number 9,
24 or article 9. Not all of it, not all of it.

25 THE COURT: Mr. Marks.

1 MR. MARKS: Well, it is true that I did not
2 translate the entire report word for word. What I did not
3 translate was the -- was all of the allegations in the report
4 as to what the evidence was at trial.

5 MS. MOORE: You did not translate that or you did?

6 MR. MARKS: I did not translate all of that.

7 THE COURT: In order for me to sentence the
8 defendant, he has to have read, understand and at least
9 discussed this report with you.

10 MR. MARKS: That we have done. Unless your Honor
11 wants me to -- wants the interpreter to read every word of the
12 report to Mr. Zayed, then we need some time to do that.

13 THE DEFENDANT: It should be translated to me in the
14 Arabic language so that I may read it. I asked that a number
15 of times from Mr. John, my attorney.

16 THE COURT: I am going to allow an interpreter to
17 translate this presentence report and to have you discuss this
18 report with him, Mr. Marks.

19 MR. MARKS: It has essentially been done, but if
20 your Honor wants the interpreter to read every word to him,
21 then we could do that, that's fine.

22 THE COURT: It might have been done, but the record
23 is not clean on this particular issue.

24 MR. MARKS: I agree. It's going to take some time,
25 your Honor; it's an 18 page report.

1 THE COURT: I guess we're going to have to put it
2 over then. We might as well do the same thing with Mr.
3 Goodman, too.

4 MS. MOORE: Mr. Goodman, I believe, had the report
5 translated in Arabic word for word. His client has had the
6 opportunity to in fact read the report completely in Arabic,
7 and that happened several weeks ago.

8 THE COURT: We'll bring Mr. Goodman up.
9 Have you had the presentence report translated for
10 your client?

11 MR. GOODMAN: Yes.

12 THE COURT: And you've discussed it with him?

13 MR. GOODMAN: We discussed it in general. As he
14 said on the record, we have not gone over it point by point,
15 but he knows what's -- he knows the contents of the report.
16 We talked about it generally. We talked about the
17 recommendations of the report and we have talked about our
18 objections to it.

19 THE COURT: Is he ready to proceed now?

20 MR. GOODMAN: Let me talk to him for a moment.

21 (Pause.)

22 MR. GOODMAN: We're ready, your Honor.

23 THE COURT: All right. Take Mr. Zayed away.

24 I'm going to have the interpreter translate the
25 presentence report for Mr. Zayed and have him discuss it with

1 Mr. Marks. So I will sentence Mr. Moayad but not Mr. Zayed.

2 THE CLERK: When do you want to do it?

3 THE COURT: September.

4 MR. MARKS: Do you want to do it later today?

5 THE COURT: We can do it later today or the week
6 after next.

7 (Pause.)

8 THE CLERK: The week of August 8th?

9 MS. MOORE: I'm actually out of town that week. Is
10 there any way we can do it later today?

11 MR. MARKS: Actually, I'd prefer not. I just had
12 this dental surgery. .

13 MS. MOORE: September it is.

14 THE COURT: A date in September?

15 THE CLERK: September 1st, Thursday, 9:30.

16 (Defendant Zayed leaves the courtroom.)

17 THE COURT: Called Mr. Moayad again.

18 (Case called.)

19 THE COURT: Are you ready for sentencing now, Mr.
20 Al-Moayad?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you wish to say something?

23 THE DEFENDANT: Yes.

24 THE COURT: Go ahead.

25 THE DEFENDANT: In the name of God, the most

1 compassionate, first of all, the allegation that was against
2 me in Germany and here were different. First they said that I
3 give Osama bin Laden \$200 million and then they said \$100
4 million and then now they say \$20 million.

5 At the end they didn't prove anything of that in the
6 trial and at the same time they didn't bring me any records of
7 what I said to Al Ansi in Yemen.

8 Al Ansi here, he was lying here on the stand and
9 also he was lying on the tapes. He said to his -- I don't
10 know his name -- Brahim, and he said to him like play with the
11 tapes and we have a plan you have to follow and he changed the
12 whole things into supporting Hamas. Hamas, they have an
13 office in Yemen and in all the Arab countries and in Europe.

14 God is my witness, I did not support Hamas with
15 anything and if I support them I would say so because it's not
16 forbidden in my country.

17 After that, they invited us to Germany to get some
18 money for the charity deeds that I have been doing and I would
19 like you, your Honor, to review the questionnaire from the
20 government authority to the United States Government about the
21 questions of what I have done to arrest me, and I would like
22 to remind your Honor, God bless you, that the recordings were
23 82 hours and they only presented 8 hours and it was
24 interrupted.

25 In spite of all of that, they did not allow me to

1 view it in the prison and I would like your Justice to look at
2 me and look at my children. I have 23 children and
3 grandchildren and also I have my mother and I have my wife.
4 You would deprive me from all of this.

5 And I would like you, your Honor, to understand me
6 that people of Yemen send you a promotion for me and they
7 backing me up with all of what the allegation against me.

8 And my history is well-known. I never did anything
9 bad to anybody. I grew up very poor and that's why I feel the
10 passion for the poor people.

11 And I had moved into a new city and this city was
12 built by a contractor, his name, /AL as pack /KEU, and they
13 name the city to be /AL last back /KEU, and when I went there,
14 the contractor said to us that he will build a mosque for the
15 people to pray in, but he did not, so I opened my house, and I
16 opened my basement for three and a half years for the people
17 to pray in and after that I asked the government of Yemen to
18 give me land, and I took the land and also I bought a piece of
19 land next to it and I built on top of it a mosque and at the
20 basement of this mosque I made it as a shelter for the people
21 during the CIVIL WAR in Yemen.

22 And I built two mosques, one for the women and one
23 for the men, and the biggest mosque for women in Yemen is
24 mine, and I built a house for the Iman and for the person that
25 calling for the prayer, and also a house for the guards who

1 guard the house, the mosque, and also a place to wash their
2 dead people and I found the poor people were going -- were not
3 able to go get treatment so I decide to open an outpatient
4 clinic and brought doctors to treat the people. And also I
5 built outpatient clinic, a psychiatric outpatient clinic to
6 treat the people.

7 And the kids were going from our city to a school
8 that is about one kilometer far from their houses and they
9 would go there during the day and come in the afternoon during
10 the hot weather, so I decide to build a school for them in the
11 city and I found that the poor people were not having enough
12 to eat and they were going to the garbage to eat and that's
13 why I open the charitable oven or bakery and I was feeding
14 1000 family every day.

15 And I found that the people are not able to get
16 clean water and I dig a well for them and I have next to me
17 250 orphans, I supply them with clean water, and 150 families,
18 poor family, we give them the water for free.

19 And I found some of the middle class they are okay
20 to live but sometimes they have emergency; for example, if a
21 cabdriver, his car got broken or something like that, I decide
22 to open a fund and give him the money to fix his car without
23 interest.

24 And I found that the poor and the needy people they
25 are not able to buy the oil and that's why I open a

1 supermarket, a charitable supermarket, and I was selling them
2 the oil at the cost of the merchandise.

3 And I found the young people are not able to get
4 married because of the expenses of marriage and I decide to
5 have the mass wedding, and I did the first one and the second
6 one and we were spending the money on them to have a mass
7 wedding so they can get married.

8 And I found that the young men and women, they don't
9 have -- they have plenty of time and they are not able to use
10 it, so I decide to open a computer center for them to learn
11 how to use the computer.

12 . And I found that some of the students are not
13 able to go to school because they are not able to pay for the
14 school fees and they are not able to pay for the notebooks and
15 the bags and all of this stuff for the school, so I decide to
16 buy them this stuff and give it to them, so I was giving them
17 the notebooks, the bag and the stuff for school.

18 And in winter when it gets so cold, I found that the
19 poor people are not able to have cover so I decide to buy
20 blankets for them and give it to them for free.

21 And I found that the poor people also they are not
22 able to enjoy the feast or the holiday like everybody else so
23 I decide to get money from the donors, the people donor, the
24 people that donate money for me and buy them clothing, buy
25 them shoes so they can enjoy the feast too.

1 And I was buying the cows and slaying the cows and
2 give them meat, a kilo or two kilo for the family so they can
3 also celebrate the feast.

4 And summer, when there is an emergency, somebody got
5 sick and he doesn't have the money, we were supporting them
6 and giving them the money for treatment, and if somebody
7 passing by our city and he doesn't have any money, we were
8 giving them the money.

9 The city chose me to be the president of the council
10 of the city so if there is any problem or dispute between
11 family I was interfering between them and solve the problem.

12 And God is my witness because I do all of these
13 deeds just for God and I should not say it in public but I was
14 put in position to have to say it.

15 And I give a letter to my first attorney,
16 Mr. Howard, and I give him to submit to your Honor with regard
17 to sending somebody to Yemen to see what I was doing when I
18 was in Yemen.

19 And I came to your country as a guest and this is my
20 first time to come to your country and I haven't done anything
21 against the American people and I haven't done -- and I don't
22 have any intention to do anything against American people and
23 I love the American people because the American people are the
24 flag of freedom.

25 And as you heard the witness when they came on the

1 stand and they said that I was speaking in the Friday prayers
2 and I was saying that we love the United States and we love
3 the Americans because they are against the unjust people, one
4 like Saddam Hussein.

5 And praise God and thank God because the ambassador
6 of the United States in Yemen never said anything bad about me
7 and he knows me and he knows what I was doing in Yemen.

8 Your Honor, Judge, they call me in Yemen that I'm
9 the father of the needy people. I beg you, Judge, to look at
10 me with what I have done and what I was doing, not through the
11 allegations.

12 And God is my witness, and I believe in God, and I
13 believe in the faith of God and I respect God's actions, and
14 doctor in Germany said to me "you have a problem with your
15 liver and you might live at the most 10 years or so" and I
16 have bronchial asthma and also I have diabetes.

17 And thank God I reach that level, and I would like
18 you, Judge, to send somebody to see what I was doing in Yemen
19 and what I have done in all of my life, and I can give you the
20 piece of paper that is in front of me to check on all of what
21 I have done.

22 And I would like to say to your Honor, Judge, God
23 bless you. God would never banish anybody on the judgment day
24 because God said that "I will punish you if I say to you this
25 is wrong and if you have done it so I will punish you, but I

1 will give you the right way. This is the right way and this
2 is the wrong way. After that I will punish you."

3 We never knew that Hamas was illegal. Their office
4 is open in my country, in the Arab countries, in Europe, but I
5 didn't know that it wasn't allowed in United States and as I
6 heard in the news, they went into the election and they left
7 everything.

8 THE COURT: I'm going to let Mr. Goodman say
9 something.

10 THE DEFENDANT: Thank you, and thank you for your
11 hospitality. And I have been here for 900 days and I have
12 kids, I have 23 kids to take care of, so I'm thanking you,
13 your Honor.

14 Thank you.

15 THE COURT: Mr. Goodman.

16 MR. GOODMAN: Maybe you should go sit down.

17 THE DEFENDANT: I'm all right.

18 MR. GOODMAN: May the defendant sit down while I
19 speak?

20 THE COURT: Yes.

21 MR. GOODMAN: Your Honor, after sentencing I have an
22 application with regard to my status in the case that I would
23 like to make, so I just would like to apprise the court and
24 counsel of that now, but right now I'd like to proceed and
25 address the issues that are at hand.

1 THE COURT: What is it, are you going to ask to be
2 appointed as appellate counsel?

3 MR. GOODMAN: No. We have Mr. Boyle, who is a far
4 more experienced appellate counsel than I, who has already
5 been appointed by you in this case for the sentencing and I am
6 confident that he will be able to handle the appeal, but I
7 have another application that I'd like to raise with you.

8 THE COURT: Go ahead.

9 MR. GOODMAN: But not now, if I may.

10 I have a petition --

11 THE COURT: Just a second. Let the record reflect
12 that I have received hundreds and hundreds of letters and
13 petitions on behalf of Sheik Moayad, the latest being a huge
14 box of post cards or petitions supporting the sheik.

15 I have those communications from people, they are in
16 Arabic so I don't know where they were from, but I assume they
17 were from Yemen.

18 MR. GOODMAN: This is one from the United States. I
19 just received it this morning. I'd like to hand it to the
20 court. It's from probably, looks like, several dozen people
21 throughout the United States, academics and clerics and
22 others. We have already given it to the government.

23 THE COURT: All right.

24 MR. GOODMAN: Your Honor, for purposes of this
25 argument, I'd like to first say that we, I and my client

1 assume, have to assume the guilt for purposes, as I said, of
2 this sentencing proceeding, of the charges of which he has
3 been convicted.

4 We agree that under the post Booker cases in the
5 Second Circuit, the court is pointed in the direction of the
6 guidelines and is told to take those guidelines into account,
7 it is a factor that the court should take into account. It is
8 not, as the government says, something that can only be
9 overridden by exceptional circumstances.

10 I don't believe that there's any case law that
11 supports that proposition, but in certain instances, with
12 regard to this particular defendant, even though it requires
13 that the court only take the guidelines into account as a
14 factor, and that there is no requirement that they be
15 overridden by exceptional circumstances, in this case in many
16 ways the circumstances are exceptional.

17 We believe that it's appropriate to step away from
18 the guidelines because of certain factors that are unique in
19 this case. While the defendant, Sheik Al-Moayad, had traveled
20 to other countries in the Middle East and in the Islamic
21 world, he has never been in the United States until he was
22 dragged here after four days in Germany, after being arrested
23 and after being held in Germany for extradition proceedings.

24 His life was truly dedicated to charity and the
25 poor. Many of the things that Sheik Al-Moayad just spoke to

1 the court about I did not know about but many of them I did,
2 and I knew them from a number of sources. We know them from
3 the two character witnesses who testified in this case.

4 Now, Miss Chen in her letter said that one of the
5 character witnesses, when he was shown parts of the videotape
6 from the DVD's in this case, said, Well it must be a fake. On
7 the other hand, he had never seen those before, he had never
8 had an opportunity to see those. He had no idea what was
9 happening.

10 Both of these gentlemen testified, really without
11 any serious contradiction or cross-examination, as to Sheik
12 Al-Moayad's activities in Yemen. They both testified, one in
13 particular, that he had been recruited by the sheik to find
14 poor people living in the area and to get those poor people to
15 register so that they could receive food from the bakery and
16 from the supermarket that the sheik was running that he has
17 just described to the court.

18 They were asked on cross-examination, Isn't it true
19 that you have to be a member of the Islah Party in order to
20 get the food from the bakery and get the food from the market?

21 These were questions obviously that were prompted by
22 Mr. Al Ansi because Mr. Al Ansi testified to this later, so
23 the prosecution was talking to Mr. Al Ansi while they were
24 cross-examining these Yemeni witnesses, but they were not
25 willing to call Mr. Al Ansi as a witness.

1 So we know about the bakery, we know about the
2 market, we know about the water supply that this man provided
3 to this community.

4 The only evidence -- again, Miss Chen reflects that,
5 Well, when he talked about charity, when the sheik was talking
6 about charity, when he mentioned charity, medical supplies,
7 these were code words for terrorism.

8 There was only one witness to that, only one person
9 testified to that and that witness was not a part of Sheik
10 Al-Moayad's -- was not a part of the prosecution's case. That
11 witness was Mohammed Al Ansi, someone who they had so little
12 confidence in as a witness that they would not call him
13 themselves, someone who had literally set himself on fire in
14 front of the White House because he felt he had not received
15 the \$10 million to which he was entitled for his escapade.

16 Even though we assume the guilt of every charge of
17 which this man was convicted for purposes of this discussion,
18 the one thing that Al Ansi added, which was the providing of
19 material aid to El Diad, that one charge was the charge on
20 which this jury acquitted him, and it was a profound act on
21 the part of this jury, having heard all the testimony they
22 heard, having heard of the tapes they heard, to disregard the
23 testimony of Al Ansi and still acquit him on those charges.

24 Al Ansi has no credibility, so when he talks about
25 his charitable activities, when he talks about the bakery,

1 when he talks about the clinics, when he talked about the
2 medical supplies, there is virtually no one other than Al Ansi
3 that contradicts that.

4 We also know about this gentleman's charitable
5 activities, not only from the testimony of the two character
6 witnesses from Yemen who came, but from the photographs in
7 this case -- and I might add that these were photographs --
8 this man was lured to Frankfurt, we know that he was lured to
9 Frankfurt. We know that he was totally surprised when he was
10 arrested. These photographs were taken before that.

11 These are not staged photographs, these are genuine,
12 authentic, spontaneous photographs of his activities, and I
13 would point out to the court we have them all, the court can
14 look through them, time after time we see him surrounded by
15 people who are poor, surrounded by children, surrounded by
16 hungry people, surrounded by poor people, handing out blankets
17 in this particular photograph, this is Exhibit 8 -- excuse me,
18 this is Defendant's Exhibit U for the record.

19 You'll notice, and I had one of the witnesses, I
20 believe it was our expert, Bernard Hakim, read all of the
21 signs that are seen in all of these photographs. In none of
22 those signs is there anything about Islah Party members only,
23 is there anything about hatred of Americans, is there anything
24 about Hamas. All these signs say these are activities, these
25 are charities for poor people, come if you have need. Over

1 and over again that was this man's message on the walls, in
2 the printing that we see, and that was the message of his
3 life.

4 These children are poor. You can look at their feet
5 and see that they have barely anything on their feet. They
6 have no shoes. These are more children, these are the people
7 to whom he devoted his life. Here is the food that he was
8 distributing, over and over again. Here is the bakery where
9 dozens, scores and scores of loaves of bread that he provided
10 for the poor one after another.

11 I might add that this was recognized not only by the
12 two character witnesses, not only by the people who have
13 written to the court, not only by the sheik as he spoke to the
14 court, this was recognized by the government itself.

15 In one of the tapes, one of the confidential
16 informants, CI-2, says, I know what you're interested in.
17 You're interested in charity. I'm interested in jihad. Let's
18 see if we can combine our forces.

19 So they knew perfectly well, because he was being
20 coached by Brian Murphy, CI-2 was being coached, they both
21 were, they knew perfectly well what his abiding passion was.
22 His abiding passion was concern and care for the poor, his
23 abiding passion was doing the commands of his God, as he
24 understood them.

25 I know that in our submission we itemized each of

1 the charitable activities. I'm not going to spend a lot of
2 time on it. Sheik Moayad spoke about them all, the bakery,
3 the medical clinic, the holistic health clinic, the food
4 store; there were the mosques, there were the schools, there
5 was the water distribution and on and on and on.

6 This man is not someone who the court sees, I'm
7 sure, on a regular basis in sentencing where they will say,
8 Well, I always gave to the Red Cross. I always participated
9 in the blood drive. I was a member of the Parent Teachers
10 Organization. I did this or I did that. I gave to the United
11 Jewish Appeal, I gave to Catholic Charities, whatever it is.
12 This is not someone like that, this is someone who did not
13 take on charity as something which is a side part of their
14 life. This was his life; this was his life and he did so for
15 30 years, my co-counsel points out.

16 I might also add that we received, I just
17 received -- when did we receive this? Today. We received
18 this morning an amendment, an addendum by Miss Langone to the
19 presentence report, which I believe undermines or at least
20 puts in serious doubt some of the statements made by Miss Chen
21 in her letter to the court regarding my client's health.

22 I would like to read it for the record: "Subsequent
23 to disclosure of the presentence report, the Probation
24 Department received a medical record pertaining to the
25 defendant from the Metropolitan Detention Center. The record

1 reflects that the defendant has Hepatitis B, Hepatitis C, and
2 is being treated for these conditions at the infectious
3 disease clinic at the facility.

4 Additionally, the defendant is being treated for
5 asthma, diabetes and high blood pressure. He is currently
6 prescribed the following medications: Ranitidine, acid
7 reflex; Metformin for diabetes; Prednisone, steroid;
8 Flunisolide Nasal, inhaled corticosteroid; Albuterol, inhaler;
9 Ipratropium, inhaler; Triamcinolone Acetonide, inhaler;
10 Montelukast, asthma medication; and Doxazosin, high blood
11 pressure. The medical records also reflect that the defendant
12 is being treated by the mental health clinic for anxiety;
13 however, no further information was provided."

14 THE COURT: I'm in receipt of that amendment.

15 MR. GOODMAN: That is the submission.

16 So, in addition to a lifetime of charity in the
17 later stages of his life, he finds himself really in a dire
18 condition with regard to his health.

19 Not that he won't be treated for it, I will not
20 argue about that at the moment, but really his health is
21 seriously compromised.

22 I'd like to talk just for a moment about the issue
23 of Hamas because we addressed it in our letter and it was also
24 addressed by Miss Chen and by the government, and it is this.

25 We do not for the moment, for purposes of this

1 argument and this discussion, dispute the finding of the jury
2 that he is guilty of providing aid to a terrorist
3 organization, namely Hamas. The question is, was his state of
4 mind such that he in any way recognized the criminality of
5 that act, the evil of that act, if you will?

6 This is a mens rea issue. This is an organization
7 which is not only totally legal in Yemen, it is respected in
8 Yemen, and not just in Yemen but throughout the entire Middle
9 East. They have a building in downtown Sina, a short distance
10 from his office, his mosque, and it says Hamas right there.
11 Nobody hides the fact, nobody is embarrassed about the fact,
12 they are proud of it and cherish it and people throughout the
13 Middle East support Hamas. Whether that is right or wrong --

14 THE COURT: But there was testimony by, I think, a
15 man by the name of Black, who was on a bus with his cousin and
16 Hamas put a bomb on it and they blew up the bus, killed the
17 cousin and injured Mr. Black.

18 MR. GOODMAN: I have no doubt, your Honor, that
19 Hamas engages in terrorist activities which are reprehensible
20 and which I do not intend to defend. I simply said that
21 people throughout the Arab world support it, and Mr. Levitt,
22 the government's expert in this case, agreed that it has wide
23 support in the Arab world because Hamas, in addition to
24 engaging in those reprehensible activities, engages in
25 charitable activities as well and gets a great deal of support

1 because the condition of the Palestinian people, to use the
2 word of Mr. Levitt, is dire, and people who are pushed into
3 the corner that these particular people are, have been pushed,
4 have engaged in terrorist activities, which I will not for a
5 moment stand up here and defend, but they also engage in
6 widespread charitable activities which are widely supported
7 and understood to be Hamas activities throughout the Middle
8 East, throughout the Arab world.

9 So if he had been found guilty, he has been found
10 guilty of providing -- of providing material support to Hamas,
11 conspiring to do so and attempting to do so, to a terrorist
12 organization, his idea of whether that is a bad organization
13 is no different than that of millions and millions and
14 millions of other people in his community.

15 Your Honor, Sheik Al-Moayad has referred to the fact
16 that he was never in this country until he has been brought
17 here by the FBI and has stayed here and has awaited trial. He
18 thanked the court and, I take it, in your capacity as a
19 representative of the United States, the United States, for
20 its hospitality.

21 I have to say that in imposing sentence today, the
22 court can reflect upon all sorts of terrible things that have
23 happened in this world recently, and all sorts of terrible
24 things and good things that have happened in the world
25 throughout the history of this planet.

1 In the Second Book of Exodus, Moses, having killed
2 an Egyptian soldier, runs away and seeks refuge in Media, and
3 there he receives genuine hospitality, genuine relief, genuine
4 respite from his sorrows. And Jethro has him marry one of his
5 daughters and he names one of these children Sojourner, and he
6 says, I am naming this child, giving this child this name
7 because I was a stranger in a strange land.

8 This man is a stranger in a strange land today, and
9 he asks the court for the court to step back from the
10 guidelines and to impose a sentence which achieves justice,
11 redemption and understanding at the same time.

12 Those are our remarks.

13 THE COURT: Thank you. Miss Moore.

14 MS. MOORE: Your Honor, obviously many of the
15 arguments that the defendant and his counsel made this morning
16 were made during the course of the trial and clearly rejected
17 by the jury on the basis of the evidence they saw over the
18 course of six weeks.

19 The jury ultimately convicted this defendant of five
20 separate counts of federal crimes of terrorism, three of them
21 relating to Hamas and two of them relating to al-Qaeda. I
22 don't intend to recap Miss Chen's summations from trial or my
23 rebuttal summation, we would be here hours, so I don't rebut
24 what they said point-by-point.

25 I will rely extensively on the submissions we have

1 already made to the court as well as the trial record. I
2 would, however, like to respond to one thing that was said,
3 which was Mr. Goodman's claim that his client's state of mind
4 was that he didn't have any way of recognizing the evil of
5 Hamas as an organization.

6 As the court pointed out at trial, the jury heard
7 from Gideon Black, whose cousin died in a Hamas operation.
8 With respect to this defendant's state of mind, the court is
9 aware that that very terrorist attack was announced by the
10 leader of Hamas at a wedding hosted by this defendant.

11 Not only was this defendant there, hosting a wedding
12 where that attack was announced by Hamas, he's later portrayed
13 in videotapes in Germany laughing about that incident. To say
14 that this defendant does not understand the evil of that
15 organization is a gross misstatement of both his state of mind
16 and the evidence that was adduced at this trial.

17 With respect to the claim that Hamas is widely
18 supported in Yemen, we also heard that al-Qaeda is widely
19 supported in Yemen. That doesn't make it right.

20 The defendant was convicted of five counts of
21 federal crimes of terrorism. I would note, as Miss Langone
22 pointed out to me this morning, that paragraph 65 is slightly
23 incorrect. The maximum sentence the court can impose is
24 900 months, not life. Other than that, the government rests
25 on the trial record, the evidence and the submissions we have

1 already made.

2 THE COURT: While the defendant is not being
3 sentenced for the events of 9/11, he first came to the
4 attention of the authorities because of 9/11.

5 We all remember September the 11th. At 8:43 a
6 hijacked American Airlines plane was flown into one of the
7 towers of the World Trade Center. At 9:03 another hijacked
8 airplane was flown into another tower. At 9:45 a.m. a
9 hijacked airplane was flown into the Pentagon, and at 10:10 a
10 hijacked plane heading for Washington, D.C crashed just
11 outside of Pittsburgh, Pennsylvania.

12 I said before, he's not being tried for these
13 events. However, this happened in September of 2001, and it
14 was in November of 2001 that Al Ansi, a Yemeni national,
15 contacted the FBI and told them about Mr. Moayad, and stated
16 that Mr. Moayad was supplying terrorist organizations,
17 including al-Qaeda and Hamas, with money, weapons and
18 recruits.

19 An investigation began, and Al Ansi was sent to
20 Yemen, made contact with the defendant Moayad. They then
21 lured Mr. Moayad over to Frankfurt, Germany. There were
22 several meetings in a hotel in Frankfurt, and these meetings
23 and conversations were videotaped and they were audiotape, and
24 they were done without the knowledge of Mr. Moayad.

25 These conversations were chilling. Mr. Al Ansi

1 also, as I recall, testified that Mr. Moayad personally gave
2 Osama bin Laden \$20 million some time prior to 9/11. The
3 logical question would be, How were these monies used by
4 al-Qaeda, a terrorist organization?

5 There was also testimony by Mr. Al Ansi about monies
6 that were given to Hamas. The logical question is, How were
7 these monies used by Hamas?

8 I recall the testimony and watching the videotapes
9 of the defendant clapping when it was announced that this bus
10 was bombed in Tel Aviv wounding and killing several people,
11 and there was testimony of Mr. Black that was also chilling.

12 I have thought, as I do with every sentence, very
13 deeply about what sentence would be appropriate in a case like
14 this. Booker comes along and says that in situations like
15 this the guidelines are advisory and the sentence must be
16 reasonable.

17 The question is, What is reasonable? Each case is
18 different. I have looked at the record of Mr. Moayad and his
19 ailments, I looked at his protestations of his work with
20 charities, but I also look at the fact that he did provide
21 material support, including money, weapons, and recruits to
22 Hamas and to al-Qaeda.

23 I listened to Mr. Moayad, and evidently he doesn't
24 understand what is going on or he's in a state of denial --
25 and maybe it's a combination of both -- but I cannot see

1 myself being lenient as you ask, Mr. Goodman.

2 I'm going to sentence the defendant, with respect to
3 count one of the indictment, to 180 months to the custody of
4 the Attorney General. I sentence the defendant on count three
5 to 180 months, to run consecutive to count one. I sentence
6 the defendant to 180 months on count four, to run consecutive
7 to one and three. I sentence the defendant to 180 months, to
8 run consecutive to counts one, three and four, and I sentence
9 the defendant to 180 months to run consecutive to one, three,
10 four and five.

11 I sentence the defendant to \$100 special assessment
12 on each count, for a total of \$500. I sentence the defendant
13 to a \$250,000 fine on each count, for a total of \$1,250,000.

14 I advise the defendant you have a right to appeal
15 this sentence and also appeal this conviction.

16 MS. MOORE: Did you sentence the defendant to
17 15 years on each of the counts of conviction, to run
18 consecutive to one another?

19 THE COURT: That's right, 180 months, the same
20 thing.

21 MR. GOODMAN: I believe that is 900 months.

22 THE COURT: And there is a three-year -- five year
23 or three year?

24 PROBATION OFFICER: Three years.

25 THE COURT: Three years supervised release on each

1 count, to run concurrent.

2 THE DEFENDANT: Your Honor, what have I done?

3 THE COURT: The argument that you made has to be
4 made to a court higher than this court. Your lawyers will
5 file an appeal to your conviction and will also file an appeal
6 to my sentence.

7 You said you had an application?

8 MR. GOODMAN: I do, your Honor. I would ask to be
9 allowed to withdraw my appearance at the time that a claim of
10 appeal is filed in this case.

11 THE COURT: I will grant that to you after you file
12 a notice of appeal on behalf of the defendant.

13 MR. GOODMAN: I believe that Mr. Boyle will file --
14 thank you, your Honor.

15 I would like to say, in addition, that when Mr.
16 Boyle came into the case, Ms. Deek was taken off the memo for
17 purposes of visiting the defendant at the Metropolitan
18 Detention Center.

19 We would ask that at this point she -- she is
20 planning on staying on the case on a voluntary basis on the
21 appeal. We would ask that she be allowed to be -- that she be
22 placed back on the memo so she can visit the defendant.

23 MS. MOORE: Your Honor, I'd like --

24 THE COURT: I don't believe I have the authority to
25 do that.

1 MS. MOORE: Your Honor, I will discuss the matter
2 with Mr. Boyle. At this point I believe Mr. Boyle will be the
3 only counsel of record and that --

4 THE COURT: Are you asking that Miss Deek be allowed
5 to assist Mr. Boyle in the appeal?

6 MR. BOYLE: Your Honor, I would make that request
7 too. She has very graciously volunteered to work on the
8 appeal. She was here at the trial. She also speaks the
9 language and she would be an enormous asset to the work on
10 this appeal.

11 Mr. Goodman has indicated he's available for my
12 advice and so forth, but I certainly -- she can file an
13 appearance as an admitted attorney. In any case, I would join
14 that request.

15 THE COURT: Well, since you just came in and Miss
16 Deek is familiar with it, I will appoint Miss Deek to assist
17 you in perfecting the appeal for Sheik Moayad.

18 MR. BOYLE: Thank you, your Honor.

19 MR. GOODMAN: One other matter, your Honor, with
20 regard to designation. We would ask that where the issue of
21 designation is concerned, when it arises in this court's
22 consideration, that he be designated as close as possible to
23 New York City so that he can be seen more easily and be more
24 accessible to his attorneys.

25 THE COURT: I think the length of his sentence is

1 going to dictate where he will be designated, and I don't
2 think that there is any facility near New York that can
3 accommodate him. So I'm not going to make that request of the
4 Bureau of Prisons. All right.

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